



California Fair Political Practices Commission

May 23, 1989

Frank Solomon, Jr.
Attorney at Law
757 Appleberry Drive
San Rafael, CA 94903

Re: Your Request for Advice
Our File No. A-89-246

Dear Mr. Solomon:

This is in response to your request for advice regarding your responsibilities under the conflict-of-interest provisions of the Political Reform Act (the "Act").¹

QUESTION

Must a public official disqualify from participating in a decision because the landlord of a party appearing before the agency is represented by the same law firm which provides legal counsel to the official?

CONCLUSION

When a public official does not have a financial interest in a decision, the public official need not disqualify from participating in a decision simply because the landlord of a party appearing before the agency is represented by the same law firm which provides legal counsel to the official.

FACTS

You are an elected member of the Board of Directors of Las Gallinas Valley Sanitary District (the "district"). The district provides secondary sewage treatment. For a number of years, Fairchild Semi-conductor operated a factory which contributed two to three percent of the total dry weather sewage handled by the district. Fairchild Semi-conductor has applied to the district

¹ Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

for a permit to discharge ground water containing carcinogenic solvents and other pollutants into the sewage treatment system.

The district has secured the services of an environmental engineering firm to conduct a study of the problems presented by these pollutants and to make recommendations to the district. On March 30, 1989, the district conducted a public hearing. An attorney from the San Francisco law firm of Howard, Rice, Nemerovski, et al appeared on behalf of the landlord from whom Fairchild Semi-conductor leases a site for its operations.

In the spring of 1988, you retained the law firm of Howard, Rice, Nemerovski, et al to represent you and a corporation of which you are the sole stockholder in Chapter 11 bankruptcy matters. Although represented by the same law firm, you and the landlord are not represented by the same attorneys in the law firm.

You are concerned that retention of the same law firm by you and by Fairchild Semi-conductor's landlord may give rise to a conflict of interest which would require you to disqualify from participating in decisions related to Fairchild Semi-conductor's permit application.

ANALYSIS

The Political Reform Act prohibits a public official from participating in a governmental decision in which he knows or has reason to know he has a financial interest. (Section 87100.) You are a public official. (Section 82048.)

An official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official or a member of his or her immediate family or on:

(a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.

(c) Any source of income other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating two hundred fifty dollars (\$250) or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made.

(Section 87103(a)-(e).)

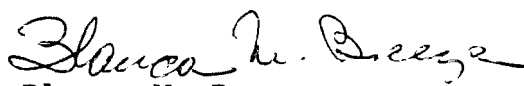
Under the facts as presented in your request for advice, you do not appear to have a disqualifying conflict of interest because you do not have a financial interest in the decision. Although you and Fairchild Semi-conductor's landlord are represented by the same law firm, you do not have an investment in the law firm nor do you have any interest in the real property owned by the landlord. Moreover, neither the law firm nor the landlord have been a source of income or gifts to you in the preceding 12 months and you have no involvement in the management of either the law firm or the landlord's business.

Because none of the disqualifying provisions of Section 87103 apply to your facts, you do not have a financial interest in any decision related to Fairchild Semi-conductor's permit application before the district and need not disqualify from participating in decisions related to this permit application.

I trust this letter clarifies your responsibilities under the conflict-of-interest provisions of the Act. Should you have further questions regarding this matter, do not hesitate to call me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan
General Counsel


By: Blanca M. Breeze
Counsel, Legal Division

KED:BMB:plh

FRANK SOLOMON, JR.
ATTORNEY AT LAW
757 APPLEBERRY DRIVE
SAN RAFAEL, CA 94903
(415) 479-8611

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April 19, 1989

Fair Political Practices Commission
428 J Street
Sacramento, California 95814

Ladies and Gentlemen:

I am, and for more than 19 years have been, an elected member of the Board of Directors of Las Gallinas Valley Sanitary District, a Special District in Marin County California providing advanced secondary sewage treatment to an area with a population of about 30,000 people, together with governmental, commercial and industrial users in the Civic Center/Northgate area of Marin County. For many years, Fairchild Semi-conductor operated a factory in our District and contributed two to three percent of our total dry weather sewage.

Fairchild inquired of our District in 1987 about discharging groundwater including carcinogenic solvents and other pollutants, into our system. The problem was first discovered by Fairchild in 1982. Our District asked for information from Fairchild as to what would be contained in this discharge. Prior to answering our questions, Fairchild then sought permission from the San Francisco Bay Regional Water Quality Control Board, to discharge this material into a local creek which in turn flowed into San Pablo Bay. After substantial public opposition (with meetings of about 100 interested residents) the Regional Board instructed Fairchild to return to Las Gallinas Valley Sanitary District to seek a special permit to discharge to Las Gallinas District sewers. The Regional Board had adopted a policy that discharge to Sanitary Sewers, after pretreatment, is the preferred alternative in situations such as this.

Fairchild closed its factory during 1988. Fairchild has had other groundwater pollution problems, in Santa Clara County, which have had widespread publicity.

Las Gallinas Valley Sanitary District, with Fairchild's concurrence, hired the environmental engineering firm of Kennedy, Jencks, Chilton and Associates, to make a special study of the problem, and to make recommendations to the District. Fairchild agreed to reimburse Las Gallinas for this study.

In the course of these proceedings, I had certain opinions which I from time to time expressed. I felt, and feel, that our District has some responsibility to the public to try to deal with this matter, and to reach a decisions. My opinions have been influenced by my active participation in the California Association

of Sanitation Agencies, which has studied problems relating to toxic wastes.

Las Gallinas Valley Sanitary District, as is its custom in controversial matters, set a formal public hearing for March 30, 1989, at which interested parties and members of the public could hear the Kennedy Jencks report summary and recommendations, could make comments, ask questions, and express its opinions. Near the end of this hearing, an attorney from the large San Francisco firm of Howard Rice Nemerowski (et al) appeared on behalf of the landlord from whom Fairchild leases the site. This landlord favors the application, and wishes to rent the property to another prospective lessee (presumably at a higher rent though I have no direct information on the actual or relative rents). There has been substantial public controversy relative to the proposed new lease, with some people in the community strongly opposing it.

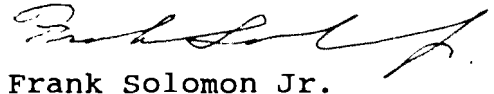
In the spring of 1988, I retained the law firm of Howard Rice Nemerowski et al, for an initial retainer fee of \$15,000 cash, to represent a corporation of which I am sole stockholder, in some complex chapter 11 bankruptcy matters. This firm initially advised me as well as the corporation. The representation continues, and is a matter of some consequence to me. This representation, and the chapter proceeding, has nothing to do with Fairchild, or its landlord, or the Las Gallinas Valley Sanitary District, or any property within 50 miles of the Sanitary District. The attorneys with whom I have dealt at Howard Rice Nemerowski et al, are not the same attorneys (to the best of my knowledge, information, and belief), as the attorneys at that firm who have been representing Fairchild's landlord. Until the time late in the March 30 hearing, when the formal appearance was made, I had no idea that the Nemerowski firm had any client with any interest in this or any other matter which might come before the Sanitary District.

I believe the board of Las Gallinas Valley Sanitary District is splintered on the matter of the Fairchild application. Prior to March 30, I prepared a draft resolution as to what I thought should be done, and spoke at two public meetings of interested groups in the community, who have taken positions similar to my own. I believe that my position is in accord with majority opinion in the District. I also believe that my participation in this matter would make a difference, and perhaps a significant difference, in how the District Board acts on the matter. I believe I have both useful background information and expertise from participating in the Board and in the state association, which would be helpful. I believe that if it is not improper for me to do so, I have an obligation to participate in this matter, because of these factors. My normal action of abstaining when in doubt, is therefore one which in this case, might not meet my moral obligations as an elected official. I am even considering the possibility, if need be, of substituting other legal counsel for Howard Rice Nemerowski in the pending matter.

I want to make sure that it is proper for me to participate.

I have asked both members of the Board, the regular legal counsel for the District, the special litigation counsel for the District, and some community leaders, as to whether they thought there was a problem. I have gotten a variety of answers. Some think that there is no problem; others express concern. Informal advice by telephone inquiry to your legal staff, indicated that under Government Code Section 87103, it did not initially appear that I had any personal financial interest in the matter. So far as I can tell, I do not have any personal financial interest in this matter. After discussion with other board members and the two attorneys for the Sanitary District, I am writing to seek your formal advice as to whether or not it is proper for me to continue to participate in the District Board's consideration of the Fairchild application. We have agreed that until we receive your advice letter, I will abstain on an interim basis. The matter is on our agenda for April 26, 1989. I hope you can respond quickly to my inquiry.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Frank Solomon Jr.", written in dark ink.

Frank Solomon Jr.

FRANK SOLOMON, JR.
ATTORNEY AT LAW
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SAN RAFAEL, CA 94903
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Very truly yours,

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Frank Solomon Jr.



California Fair Political Practices Commission

April 27, 1989

Frank Solomon, Jr.
Attorney at Law
757 Appleberry Drive
San Rafael, CA 94903

Re: Letter No. 89-246

Dear Mr. Solomon:

Your letter requesting advice under the Political Reform Act was received on April 24, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Blanca Breeze an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Kathryn E. Donovan
General Counsel

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